

United States Senate

OFFICE OF THE MAJORITY LEADER

WASHINGTON, DC 20510-7010

April 28, 2005

Senator Harry Reid
Minority Leader, U.S. Senate
S-321, The Capitol
Washington, D.C. 20510

Dear Harry:

As you know, I feel strongly that civility be the hallmark of our continued conversations over the issue of the unprecedented filibusters launched last Congress against judicial nominees with majority support, blocking 10 judges from receiving an up-or-down vote on the Senate floor.

You have spent many hours with me in conversation since your election as minority leader last winter talking about this issue, and I recognize how carefully and thoughtfully you have approached this in private. I appreciate your good will and courtesy as the 109th Congress has gotten underway, and we have made significant legislative progress since our members were sworn in.

I have listened carefully to the debate over judicial nominations since I first asked for an up or down vote on the nomination of Miguel Estrada in February 2003, and it has become clear to me that both parties have significant complaints about the process by which the Senate exercises its responsibility to advise and consent. Republicans decry the judicial filibusters that erupted in the last Congress and are concerned that such filibusters will be repeated in this one. Democrats counter that some of President Clinton's nominees were blocked in committee, and rely on that foundation to justify the filibusters now.

I have examined closely the traditions of the Senate Judiciary Committee, and reviewed the history of high-profile judicial confirmations, including the history of Supreme Court nominees. I have noted with interest that the Senate Judiciary Committee has a history of forwarding to the full Senate for an up or down vote nominees who do not receive a majority vote by Committee members, such as Robert Bork (1987) and Clarence Thomas (1991).

Currently four circuit court nominees are now pending on the executive calendar for full Senate action, and more will be reported in the coming weeks. For the good of the Senate, and in fairness to judicial nominees, the cycle of recriminations and partisanship it exacerbates must stop. Reform of the confirmation process is badly needed, and it must take account of issues raised by each party.

I therefore propose that we work together to structure two fundamental reforms to restore fairness to the confirmation process:

- Circuit Court and Supreme Court nominees should not be bottled up in committee. That is wrong. I believe that such nominees should be placed on the Executive Calendar for subsequent floor consideration in the full Senate. The Judiciary Committee plays a critical oversight and investigative role in processing judicial nominations, and this must continue. The chairman of the Committee has in the past proposed a set of “protocols” for processing judicial nominations which I believe is a worthy model to discuss as it applies to Circuit Court and Supreme Court nominees.
- Circuit and Supreme Court nominations placed on the Executive Calendar and available for debate should receive an up or down vote. Accordingly, I propose establishing a procedure by which every Supreme Court and circuit court nomination can be debated for up to 100 hours on the floor of the United States Senate. Such a structure will allow for robust and extended discussion of whether an individual should be confirmed, and will give the nominee — no matter who is President and who is in the majority — an up or down vote when debate concludes.

As I have made clear, these reforms will in no way affect the legislative filibuster, nor will they apply to other executive branch nominations, including district court nominations. There has been no systematic effort to deny District Court nominees the courtesy of an up or down vote in the Senate. And as you know, the President has a variety of options available to him to ensure that his cabinet and sub-cabinet is manned with highly qualified individuals should a particular nominee run into a snag here in the Senate.

These fundamental reforms will serve the Senate well, regardless of which party is in the majority and regardless of which party controls the White House. Moving forward, we have a chance to engage in bipartisan cooperation to resolve problems in the confirmation process.

I look forward to your positive response, and stand ready to execute this agreement in a bipartisan way that provides for input from all our colleagues to restore the precedent of a fair, up or down vote for judicial nominees.

Sincerely yours,



William H. Frist, M.D.
Majority Leader
United States Senate